IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3070 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

EXTRUSION PROCESSES LTD

Versus

GAFURBHAI AHMEDBHAI MALEK

Appearance:

1. Special Civil Application No. 3070 of 1991
   M/S TRIVEDI & GUPTA for Petitioner No. 1
   MR PM THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 22/02/2002

ORAL JUDGEMENT

1. The present petition is filed by the petitioner against the judgment and award dated 19.2.91 passed by the Labour court at Baroda whereby the labour court has directed for reinstatement of the respondent workman with

backwages.

2. The short facts of the present case are that the respondent workman was working with the petitioner on daily wage basis at the rate of Rs.11.50ps per day. It is the case of the respondent workman that on 12.2.82 when he was going outside the gate at the time the watchman Abdulbhai had asked him to bring plastic and therefore he had brought the plastic from the factory, but it is the say of the respondent workman that the watchman had wrongly levelled the allegation of theft upon him and the respondent workman was asked to go to the Plant Manager and at that time the Plant Manager and other staff of the petitioner company had compelled him to writ the apology letter and his resignation letter was also obtained. It is the case of the respondent workman that on 24.2.82 he had addressed a letter to the petitioner company intimating that the resignation is obtained under duress and compulsion and therefore the same may be treated as cancelled and he had also demanded in the said letter that he should be reinstated in service with backwages. Thereafter, a dispute was raised by the respondent workman under Industrial Disputes Act and ultimately the same came to be referred to the labour court for adjudication being Ref (LCV) No.216/82.

3. Before the labour court, the respondent workman had submitted the statement of claim on the same line as referred to hereinabove. However, on behalf of the petitioner company the reply was submitted contending that the application is not maintainable and it was also contended that the resignation was voluntarily tendered and therefore the same is not maintainable. The labour court had tried the reference and after hearing both sides the labour court had at para 7 of the award found that it has not come on record that the resignation was written by the workman under duress or coercion and however the labour court found that the workman was not communicated regarding acceptance of the resignation and therefore prior to such intimation the workman had a right to withdraw the resignation and therefore the labour court found that since the resignation was cancelled by the workman the petitioner company ought to have reinstated the workman in service and having not done so the action is illegal and therefore the workman is entitled to reinstatement in service with full backwages. The labour court ultimately passed the award and directed for reinstatement of the workman with full backwages. It is this award which is under challenge in this petition.

4. This court had passed order dated 1.5.91 issuing notice and granting ad interim relief and as a result thereof the operation of the award passed by the labour court was stayed. The said order was continued on 1.7.91 when the petition came to be admitted and as a result thereof the interim order staying the operation of the award has continued pending this petition and now the matter has come for final hearing.

5. I have heard Mr.Uday Joshi for Trivedi, Gupta and Company for the petitioner and Ms.Sangita Pawa for Mr.P.M.Thakkar appearing for the respondent. On behalf of the petitioner it was contended that dispute was outside the scope and ambit of the power of the labour court in as much as since it was not a case of dismissal from service the labour could not have adjudicated upon the issue. It was also contended by Mr.Joshi on behalf of the petitioner as the resignation was submitted the same was accepted and there was noting for acceptance of resignation and not only that there was no provision for intimating the acceptance of resignation nor there is any provision for withdrawal of resignation and therefore in the submission of Mr.Joshi once the resignation is accepted the relationship of employer and employee comes to an end. It is the contention of Mr.Joshi that once the labour court found that the resignation was not submitted under duress and coercion the labour court could not have examined the further aspects regarding communication of withdrawal of resignation in as much as there is no provision creating such obligation upon the employer to communicate the acceptance of resignation. In the submission of Mr.Joshi when the resignation was submitted it came to be accepted on the same day and therefore the contractual relationship as that of an employer and employee came to an end and since it was not a case of dismissal from service the labour court ought not to have examined the matter further and that too once it is found that the resignation was not submitted under duress or coercion. Mr.Joshi has relied upon the judgment of the Kerala High Court in the matter of Cochin Port S.C.S.Association vs Harrisons & Crosfield Ltd reported in 82(2) LLJ 141 to contend that the resignation became effective immediately as and when it is tendered by the employee.

6. However, on behalf of respondent it has been contended by Ms.Sangeeta Pawha that the dispute of any kind between the employer and the employee would fall within the scope and ambit of power of the labour court for the purpose of adjudication. Ms.Pahwa contended that as per Model Standing Order 23(2) the workman has right

to be relieved from service on giving notice of 14 days. However, she has fairly conceded that in the Model Standing Order there is no specific provision for communicating the acceptance of resignation and for withdrawal of the resignation. In the submission of Ms.Pahwa the period of 14 days enabling the workman to be relieved from service can be treated as the period during which the workman can withdraw his resignation and it was the contention of Ms.Pahwa that since the communication of acceptance of resignation is not made to the workman by the employer and further since the arrears of wages etc were also not paid the labour court rightly found that the resignation can not be said to have been accepted by the employer and this finding is a finding of fact which this court should not upset while exercising powers under Article 227 of the Constitution. Ms.Pahwa has also relied upon the judgment of the Apex Court in the case of Shambhu Murari Sinha vs Project and Development India reported in AIR 2000 SC 2473 for supporting her submission that the resignation can be withdrawn before its acceptance is made effective by relieving the employee from service.

7. Before I proceed to examine the rival contentions of the parties certain aspects are required to be noted and they are that (i) it is the case of the petitioner that the workman had voluntarily submitted his resignation on 13.2.82 and the same was accepted by the petitioner on 13.2.82 by putting endorsement and therefore the relationship of employer and employee came to an end by voluntary act of the parties And it is not a case of dismissal or discharge from service; (ii) it is admitted position that after 13.2.82 onwards the workman has not continued in service; (iii) the resignation dated 13.2.82 is written by the workman in his own handwriting; (iv) in the letter dated 24.2.82 there is a reference by the workman regarding the earlier letter and also the resignation. In the said letter it has been mentioned that the resignation is obtained under coercion and duress and therefore the same may be treated as cancelled. The workman in the letter dated 24.2.82 has not stated that his resignation is not accepted till today and therefore prior thereto he wants to withdraw the said resignation letter. Before the labour court it was not the case of the workman that his resignation was not accepted and prior thereto he had withdrawn the same but the management declined the claim of the workman and it was mentioned that the resignation was got written under duress and the said aspect is denied by the petitioner-Company.

8. The labour court, after adjudication of the case, at para 7 has recorded a finding that it can not be believed that the resignation is written by the workman under duress or coercion. However, after recording said finding the labour court has further proceeded to examine as to whether the said resignation was duly accepted or not and the labour court has found that no signature of the workman is obtained after writing the word "OK" nor the outstanding dues have been paid to the workman and therefore it can not be said that the resignation is accepted. The labour court found that since the company did not intimate to the workman regarding acceptance of the resignation the workman has right to withdraw the resignation and therefore when the resignation was withdrawn the workman ought to have been reinstated in service. In this regard, the labour court has relied upon the Model Standing Orders as provided under Bombay Industrial Employment Rules, 1959 and more particularly Clause 23(2) of the Schedule I of the said Rules which reads as under:

> "23(2) Save as otherwise provided in these standing orders a permanent workman employed on rates other than the monthly rates of wages desirous of leaving the service may do so by giving the Manager fourteen days notice in writing".

9. It does not come on record as to whether these Model Standing Orders are applicable or not. Even if it is presumed that such Model Standing Orders were applicable to the facts of the present case, then also such order is an enabling clause to the workman to leave the service by giving 14 days notice in writing and same does not preclude the workman from submitting resignation immediately. In the present case the workman submitted resignation for which there is no reference at all that he he is submitting the resignation so as to make it effective after a period of 14 days. Therefore, I am of the view that clause 23(2) of Model Standing Orders can not be made applicable to the present case. Not only that but the workman also never intended to submit the resignation so as to make it effective after a period of 14 days because in the subsequent letter dated 24.2.82 at annexure C to the petition he had not made a whisper regarding the withdrawal of resignation prior the same being accepted nor the workman has stated that his resignation is not accepted till today, i.e. 24.2.82. The only statement in the letter was that the resignation was obtained under duress or coercion and therefore same

may be treated as cancelled.

10. Further important aspect is that the workman has not continued to be on duty after 13.2.82. So the workman was also aware that his services have come to an end by acceptance of resignation on the same day. Therefore, the only case of the workman before the labour court was that his resignation was obtained under duress and coercion and therefore same may be cancelled by writing letter dated 24.2.82 and thereafter also since he has not been taken any service the dispute is raised which has been referred for adjudication to the labour court as stated above. As stated above, the labour court found that it can not be said that the resignation is given under duress or coercion or threat. Once the labour court found that the resignation is not given under threat, coercion or duress the matter could have ended there because once the resignation was voluntarily tendered and when it was the case of the petitioner company that the same was accepted immediately the labour could not have proceeded further to examine as to whether the workman had right to withdraw the resignation prior to the communication of acceptance of the said resignation. I am of the view that the labour court has clearly exceeded its jurisdiction and adjudication of the aspects regarding acceptance of resignation and communication thereof and withdrawal of resignation was beyond the scope and ambit of the power of the labour court.

11. At this stage Ms.Pahwa ahd contended that in the case of Shambhu Murari Sinha(supra) the Supreme Court has also considered that before resignation is made effective the workman has right to withdraw the same. There is no dispute on the said proposition. However, in the the case before the Apex Court, after the submission of resignation the person concerned had continued to be on duty and before his services were actually terminated the resignation came to be withdrawn, but whereas in the present case the resignation came to be made effective from 13.2.82 onwards in as much as the workman was not on duty after the resignation was submitted. Not only that but even the workman has also not contended in his letter dated 24.2.82 i.e. even before the labour court that he continued in service even after submission of resignation and before he was actually terminated from service the resignation was withdrawn. Under the circumstances, the decision of the Apex Court in the case of Shambhu Murari Sinha (supra) is of no help to the respondent.

12. Under the circumstances, when the labour court

has clearly exceeded its jurisdiction, I am of the view that the judgment and award of the labour court deserves to be quashed and set aside and it is quashed and set aside.

13. In the result, the award dated 19.2.91 passed in Ref.(LCV) No.216/82 is quashed and set aside. Rule is made absolute. There shall be no order as to costs. Interim relief granted earlier, if any, stands vacated.

22.2.2002 (JAYANT PATEL,J)